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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/612,289

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Kazuo Hayashi

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EXAMINER

MEHRPOUR, NAGHMEH

ART UNIT

PAPER NUMBER

2686

DATE MAILED: 01/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/612,289

Applicant(s)

HAYASHI, KAZUO

Examiner

Naghmeh Mehrpour

Art Unit

2686

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 05 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 11-13, 15-17, are rejected under 35 U.S.C. 103(a) as being unpatentable over Henry Jr. (US Patent 6,832,075) in view of Walton et al. (US Publication Number 2005/0135318 A1).

Regarding claims 11, 13, 16, Henry teaches a radio terminal apparatus in a CDMA mobile the order of data transmission communication system that controls and data reception on a radio channel, transmits a signaling signal periodically, and, while communication is in progress, transmits signals applying different transmission powers according to the presence or absence of the signaling signal and user information (col 1 lines 45-63), said radio terminal apparatus comprising:

a radio receiver 40 that receives a signal including one or both of user information and a signing signal (col 4 lines 25-42);

a radio transmitter 30 that transmits a signal both of user information and a signaling signal (col 4 lines 55-65);

an RLC section 26 that is connected to the radio receiver and the radio transmitter and that outputs a signaling signal, generated by the radio terminal apparatus, to the radio transmitter for transmission periodically (col 4 lines 42-55);

a processor 46/56 that sets a radio interface based on the received signal, provided by the radio receiver via the RLC section 26 and reports a suspension of transmission of the signaling signal to the RLC section 26 (col 5 lines 65-67, col 6 lines 1-35) Processor 56, wherein:

while communication is in progress, the radio transmitter transmits a transmission signal in which the signaling signal is inserted in the user information (memory 50) (col 5 lines 65-67, col 6 lines 1-13), and

while a radio characteristic test is in progress (figure 3, col 5 lines 30-67 col 6 lines 1-12), the RLC section 26 suspends transmitting the signaling signal in response to the report from the processor and the radio transmitter transmits the transmission signal comprising the user information alone at a fixed transmission power (col 5 lines 7-37, 55-67, col 6 lines 1-23).

Henry fails to teach protocol processor and the radio transmitter transmits the transmission signal comprising the user information alone at a fixed transmission power. However, Walton teaches protocol processor and the radio transmitter transmits the transmission signal comprising the user information alone at a fixed transmission power. (0080, 0090, 0092, 0404). Walton teaches a system with MAC protocol processor that transmits the user information with constant power. Therefore, it would have been obvious to ordinary skill in the art at the time the invention was made to combine the

above teaching of Walton with Henry, in order to provide efficient use of high throughput systems that is backward compatible with various types of legacy system.

Regarding claims 12, 17, Henry teaches radio terminal apparatus/test apparatus wherein according a loopback section that receives a measurement signal comprising the user information transmitted from a test apparatus and transmits the measurement signal in loopback (col 5 lines 7-65).

Regarding claim 15, Henry teaches a test apparatus the test apparatus wherein the test apparatus 51 is connected by wire to the radio terminal and controller sends the instruction to suspend transmission of the signaling signal via wire (see figure 5, col 6 lines 13-36).

3. Claim 14, is rejected under 35 U.S.C. 103(a) as being unpatentable over Henry Jr. (US Patent 6,832,075) in view of Walton et al. (US Publication Number 2005/0135318 A1) in further view Malmivira et al. (US Patent Number 6,680,913 B1).

Regarding claim 14, Henry modified Walton teaches a test apparatus 51 according wherein the radio apparatus is connected by wireline to the radio terminal via wire interface and the controller sends the instruction to suspend transmission of the signaling signal via wire (col 6 lines 13-36). However, Malmivivita teaches testing system wherein the radio apparatus is connected by wireless to the radio terminal via a

radio interface (col 3 lines 64-67, col 4 lines 1-15). Therefore, it would have been obvious to ordinary skill in the art at the time the invention was made to combine the above teaching of Malmivura with Henry modified with Malmivira, in order to provide improvement and mobility to the system.

### ***Response to Arguments***

4. Applicant's arguments with respect to claims 11-17, have been considered but are moot in view of the new ground(s) of rejection.

### **Conclusion**

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

6. **Any responses to this action should be mailed to:**

Art Unit: 2686

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Naghmeh Mehrpour whose telephone number is 571-272-7913. The examiner can normally be reached on 8:00- 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marsha Banks-Harold be reached (571) 272-7905.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

NM

December 30, 2005

*Marsha D Banks-Harold*  
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